



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

January 22, 1998

Ms. Tracy Calabrese
Assistant City Attorney
City of Houston
P.O. Box 1562
Houston, Texas 77251-1562

OR98-0204

Dear Ms. Calabrese:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 111863.

The City of Houston (the "city") received a request for all incident reports that occurred on specified dates at the requestor's address. You explain that only two incident reports exist that are responsive to the request for information. They are report numbers 099035696 I and 037780896 U. You claim that each report is excepted from required public disclosure by section 552.108 of the Government Code. We have considered the exception you claim and have reviewed the documents at issue.¹

The Seventy-fifth Legislature amended section 552.108 of the Government Code to read as follows:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

¹We also point out that the requestor states that she has failed to receive other requested information from the city, including engineering reports, drainage plans, environmental studies, permits, and code materials. Governmental bodies that wish to withhold information must, pursuant to section 552.301 of the Government Code, request an open records decision from the attorney general within ten days after the governmental body's receipt of the request for information. When a request for an open records decision is not made within the time period prescribed by section 552.301, the requested information is presumed to be public. *See* Gov't Code § 552.302. We note that the city only asks to withhold police incident reports in this request for a decision. This ruling, therefore, does not address any other information the requestor may have sought.

(1) release of the information would interfere with the detection, investigation, or prosecution of crime;

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication; or

(3) it is information that:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation;

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from the requirements of Section 552.021 if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution;

(2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication; or

(3) the internal record or notation:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation;

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

(c) This section does not except from the requirements of Section 552.021 information that is basic information about an arrested person, an arrest, or a crime.

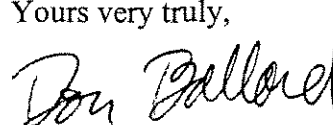
Gov't Code § 552.108. Generally, a governmental body claiming an exception under section 552.108 must reasonably explain, if the information does not supply the explanation on its face, how and why the release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(a)(1), (b)(1), .301(b)(1); *see also Ex parte Pruitt*,

551 S.W.2d 706 (Tex. 1977). You argue first that report number 099035696 I may be withheld because the police department has not cleared the case. You state that "because no suspect has been identified or arrested, the investigation has not resulted in a conviction or deferred adjudication." A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. It is not clear to this office, nor have you explained, how or if the investigation actually concluded. Further, you have not stated that the requested information pertains to an ongoing criminal investigation or prosecution nor have you explained how its release would interfere in some way with the detection, investigation, or prosecution of crime. See Gov't Code § 552.108(a)(1). Lastly, you do not assert that the information at issue was prepared by an attorney representing the state or that it reflects the mental impressions or legal reasoning of an attorney representing the state. Thus, section 552.108(a)(3) is inapplicable to this report. Since you have not shown the applicability of section 552.108 to report number 099035696 I, you must release the information to the requestor.

Secondly, you explain that report number 037780896 U concerns a case that is still open. You state that release of this open case would interfere with the investigation or prosecution of crime. We find that you have shown that release of this report would interfere with the detection, investigation or prosecution of crime. We conclude, therefore, that the city may withhold report number 037780896 U under section 552.108(a)(1). See Open Records Decision No. 216 (1978). We note, however, that information normally found on the front page of an offense report is generally considered public. *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), writ *ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976). Thus, you must release the type of information that is considered to be front page offense report information, even if this information is not actually located on the front page of the offense report. Gov't Code § 552.108(c); see Open Records Decision No. 127 (1976) (summarizing the types of information deemed public by *Houston Chronicle*).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Don Ballard
Assistant Attorney General
Open Records Division

Ref: ID# 111863

Enclosures: Submitted documents

cc: Ms. Mary Louise Mathieson
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(w/o enclosures)